

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: RANBAXY GENERIC DRUG
APPLICATION ANTITRUST
LITIGATION

MDL No. 2878

THIS DOCUMENT RELATES TO:

All Actions

Master File No.
19-md-02878-NMG

**PURCHASERS' RESPONSE TO DEFENDANTS' NOTICE OF SUPPLEMENTAL
AUTHORITY AS TO THE TESTIMONY OF SHASHANK UPADHYE**

The decision by the United States District Court for the Eastern District of Virginia in *In re Zetia (Ezetimibe) Antitrust Litigation*, No. 2:18-md-2836, ECF No. 1313 (E.D. Va. Aug. 16, 2021) provides no basis upon which to exclude the expert testimony of Shashank Upadhye.¹ *Zetia* is factually distinguishable from this case, and Mr. Upadhye offered opinions in *Zetia* on topics not at issue here.

In this case, Mr. Upadhye is not offering “a bare contract interpretation” or “an opinion as to the legal obligations of parties under a contract.”² Instead, he offers opinions, based on his extensive experience in the pharmaceutical industry, about how a reasonable generic pharmaceutical company would have acted in the face of known manufacturing problems and what a reasonable generic pharmaceutical company would have understood about regulatory requirements.³ On *Zetia*’s own terms, Mr. Upadhye’s opinions in this case are admissible:

¹ What Defendants, Ranbaxy, Inc., and Sun Pharmaceuticals Ltd. (“Ranbaxy”) neglected to mention in its Notice is that in *Zetia* portions of the testimony of Dr. Mark Robbins, who is also Ranbaxy’s expert here, were similarly excluded by the magistrate judge’s separate Memorandum Order, in particular, his contract interpretation opinion and his causation opinion were excluded. See *In re Zetia (Ezetimibe) Antitrust Litigation*, No. 2:18-md-2836, ECF No. 1315, at 6 (E.D. Va. Aug. 17, 2021).

² ECF No. 1313, at 4, 12.

³ Purchasers continue to puzzle over Ranbaxy’s objection, repeated again in its Notice, to the notion that reasonable generic companies act lawfully, without anticompetitive or fraudulent intent.

“courts may allow an expert to testify regarding custom and usage of an industry when such an explanation would be helpful to the jury.”⁴ The *Zetia* decision does not undermine the admissibility of Mr. Upadhye’s opinions offered in this case.

Dated: August 26, 2021

Respectfully submitted,

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⁴ ECF No. 1313, at 9 (citing cases).

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CERTIFICATE OF SERVICE

I, Kristen A. Johnson, certify that, on this date, the foregoing was filed electronically via the Court's CM/ECF system, which will send notice of the filing to all counsel of record, and parties may access the filing through the Court's system.

Dated: August 26, 2021

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